

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BRYAN MESSENGER,

Plaintiff,

V.

NATIONAL BOARD OF MEDICAL
EXAMINERS,

Defendant.

Case No.: 17-03755 (FLW)

ORDER

THIS MATTER having been opened to the Court *sua sponte*; it appearing that the Court entered an Order, dated August 3, 2017, appointing Dr. Mark Greenberg (“Dr. Greenberg”) as an Independent Evaluator to conduct a comprehensive forensic psychoeducational evaluation of Plaintiff Bryan Messenger (“Dr. Messenger”); it appearing that in that Order, to be clear, the Court intended the parties to submit to Dr. Greenberg any professional reports prepared *prior* to the initiation of this litigation to ensure that the Independent Evaluator is not unduly influenced by the parties; it appearing that Defendant National Board of Medical Examiners submitted to Dr. Greenberg a report, dated June 30, 2017, prepared by its expert, Dawn Flanagan; it appearing that Plaintiff argues that because this report was not created prior to this litigation, it is a *post hoc* expert report prepared for the purposes of litigation in violation of this Court’s Order, and Defendant responds claiming that the Order does not limit the parties’ submission of any report prepared after the lawsuit; it appearing that Defendant’s submission of its expert report created post-litigation went beyond the intended purpose of the Court’s Order, which could potentially unduly influence Dr. Greenberg in his evaluation of Dr. Messenger; therefore, consideration of such a report by Dr.

Greenberg would be inappropriate; it appearing that Defendant's submission of this report, accordingly,

IT IS on this 4th day of August, 2017,

ORDERED that Defendant shall claw back Dawn Flanagan's report from Dr. Greenberg, the Independent Evaluator; and it is further

ORDERED that Dr. Greenberg shall not consider and disregard Dawn Flanagan's report in rendering his opinion on Dr. Messenger; and it is further

ORDERED that the parties are advised that only documents and professional reports created prior to this litigation shall be furnished to Dr. Greenberg for his consideration.

SO ORDERED.

/s/ Freda L. Wolfson
Hon. Freda L. Wolfson
United States District Judge